

FAQ: THE “SNAPBACK” OF UN SANCTIONS ON IRAN

RICHARD GOLDBERG

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WHAT IS “SNAPBACK”?

The term “snapback” is used to describe the process by which UN sanctions and restrictions may be re-imposed on the Islamic Republic of Iran in accordance with [UN Security Council Resolution \(UNSCR\) 2231](#), which endorsed the 2015 Iran nuclear deal, formally known as the Joint Comprehensive Plan of Action (JCPOA).

WHAT SANCTIONS AND RESTRICTIONS WOULD BE RE-IMPOSED ON IRAN UNDER A SNAPBACK?

A snapback would trigger the re-imposition of all sanctions and restrictions on Iran described in UNSCRs 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010). This would include: 1) an indefinite embargo on the transfer of conventional arms to and from Iran; 2) an indefinite ban on international support for Iran’s missile program; 3) an outright prohibition on all testing and development of nuclear-capable missiles; 4) a demand to halt all enrichment-related activities; and 5) an indefinite travel and asset ban for sanctioned individuals.

HOW DOES UNSCR 2231 DIFFER FROM THESE PAST RESOLUTIONS ON IRAN?

UNSCR 2231 terminated the effect of past resolutions on Iran and made significant changes to longstanding sanctions and restrictions. UNSCR 2231 removed the demand that Iran halt all enrichment-related activities. Rather than prohibiting Iran from conducting missile tests, UNSCR 2231 merely called upon Iran not to conduct such activities. Additionally, UNSCR 2231 established expiration dates for previously indefinite restrictions, with the arms embargo and travel ban lifting in 2020, missile restrictions lifting in 2023, and a wide range of nuclear restrictions lifting through 2031. These expiration dates are commonly known as “sunsets.”

WILL THE SNAPBACK TOOL BE AVAILABLE INDEFINITELY?

No. UNSCR 2231 establishes a “sunset” on snapback in 2025. After that, sanctions and restrictions on Iran cannot be re-imposed using the snapback mechanism.

Richard Goldberg is a senior advisor at FDD. From 2019-2020, Richard served as the Director for Countering Iranian Weapons of Mass Destruction for the White House National Security Council. He previously served as chief of staff for Illinois Governor Bruce Rauner and as deputy chief of staff and senior foreign policy advisor to former U.S. Senator Mark Kirk of Illinois in both the U.S. House and Senate.

HOW DOES SNAPBACK WORK?

The snapback process begins when a “JCPOA participant State” – as defined in UNSCR 2231 (see the next question) – notifies the UN Security Council of an issue believed to constitute “significant non-performance of commitments under the JCPOA.” Unless the Security Council adopts a resolution within 30 days to ignore the complaint, all of the provisions of UNSCRs 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) that had been terminated by UNSCR 2231 come back into force. This process is called “snapback” because all prior restrictions on Iran snap back into place. Any member of the Security Council can submit a resolution to ignore the complaint. After 10 days, if no member has already done so, the president of the Security Council must submit such a resolution for a vote. The resolution to ignore a complaint can be vetoed by any permanent member of the Security Council, in which case the snapback would come into force after the 30 days expire.

WHAT IS THE DEFINITION OF A JCPOA PARTICIPANT STATE?

Operative paragraph 10 of UNSCR 2231 defines “JCPOA participants” to mean China, France, Germany, the Russian Federation, the United Kingdom, the United States, the European Union, and Iran. The use of “JCPOA participant State” in the subsequent paragraph, therefore, refers to the same group, excluding the European Union, which is not a state.

DID THE DEFINITION OF “JCPOA PARTICIPANT” IN UNSCR 2231 EVER CHANGE?

No. The term “JCPOA participant” is defined by UNSCR 2231, which includes no provision for altering that definition based on the future behavior or activities of the defined parties. Therefore, the United States remains a “JCPOA participant State” in perpetuity, as defined by UNSCR 2231. The only way to change that legal reality would be to pass an amendment in the form of a new Security Council resolution, which would be subject to a U.S. veto.

IS UNSCR 2231 LEGALLY INDEPENDENT OF THE JCPOA?

Yes. The JCPOA is a political agreement, which only applies to its few participants. UNSCR 2231, on the other hand, is a binding Security Council resolution that applies to all UN member states. Importantly, the United States has continued to urge full compliance with UNSCR 2231, even after it ceased participating in the political agreement known as the JCPOA.

DOES UNSCR 2231 MANDATE COMPLIANCE WITH THE JCPOA?

No. UNSCR 2231 merely urges states to comply with the JCPOA, but does not mandate such compliance. Other provisions of UNSCR 2231 are binding, however, including those pertaining to temporary sanctions and restrictions on Iran and to the procedure for snapping back prior resolutions if Iran is in significant non-performance of its commitments. The United States has upheld all binding provisions of UNSCR 2231, which is why the United States remains in full compliance with UNSCR 2231 and retains the right to snap back prior sanctions and restrictions on Iran.

WHAT CONSTITUTES “SIGNIFICANT NON-PERFORMANCE OF COMMITMENTS UNDER THE JCPOA”?

There is no definition provided in UNSCR 2231. The resolution’s language leaves it to the party alleging the significant non-performance of the commitment to make that assessment. Since the International Atomic Energy Agency (IAEA) has reported that Iran is violating a wide range of its commitments under the JCPOA, the United States could easily make the case that Iran is presently in significant non-performance of its commitments.

HOW IS THE SNAPBACK IN UNSCR 2231 DIFFERENT FROM THE SNAPBACK IN THE JCPOA?

As discussed, a snapback pursuant to UNSCR 2231 takes effect 30 days after a complaint is sent to the Security Council. No member of the Security Council can delay this 30-day clock if a permanent member wants snapback to occur, since the permanent member can veto any resolution to ignore the complaint. The dispute resolution mechanism under the JCPOA, on the other hand, requires consensus and multiple stages of dialogue before it ultimately arrives at the Security Council, and is thus likely to encounter endless delays.

WHY IS SNAPBACK BETTER THAN PASSING A NEW UN SECURITY COUNCIL RESOLUTION?

A new resolution to restore sanctions and restrictions on Iran could be vetoed by any permanent member of the Security Council, meaning Russia and/or China could block such action. The snapback, on the other hand, cannot be blocked by Russia or China. The snapback mechanism is designed to protect the right of the United States to insist upon and force a snapback, with the United States able to veto any resolution submitted to ignore a complaint.

CAN THE SECURITY COUNCIL VOTE TO DECLARE THAT THE UNITED STATES NO LONGER QUALIFIES AS A “JCPOA PARTICIPANT” UNDER UNSCR 2231 OR OTHERWISE RULE THE U.S. COMPLAINT INVALID?

Russia and China are circulating legal theories asserting that either party could put forward a procedural motion to ignore the plain text of UNSCR 2231, and that this motion would require a nine-vote majority for passage and could not be vetoed by a permanent member. This, however, is inaccurate. While Russia or China could indeed request such a vote and claim it is merely a procedural matter, the United States would be allowed to object and argue that the matter is substantive in nature and thus subject to a veto by a permanent member. Under Security Council precedent dating back to the founding of the United Nations, if there is disagreement within the Council over whether a resolution is procedural or substantive, the matter is put to a vote, and that vote is considered a substantive decision. Accordingly, the United States could veto the effort to characterize such a motion by Russia or China as procedural. Then, with the Council having decided that the motion is substantive, the United States could veto the motion itself. This is known as the “double veto” power of permanent members of the Security Council. Therefore, the only way to strip the United States of its status as a “JCPOA participant” under UNSCR 2231 is to pass a new Security Council resolution, which would still be subject to a U.S. veto.

ARE THERE ANY OTHER PROCEDURAL MANEUVERS THAT COULD BE USED TO BLOCK A SNAPBACK?

It does not appear that any procedural maneuver can effectively block a snapback. UNSCR 2231 compels the Security Council to act on a resolution submitted to ignore the snapback complaint. It also compels the president of the Council to submit such a resolution after 10 days. The United States could argue that motions to delay meetings or prevent votes are substantive in nature and once again subject to the “double veto.” Even if the president of the Council decided to violate the mandate to submit a resolution under UNSCR 2231, nothing could stop the United States from submitting its own resolution for a vote and then vetoing that resolution. In the end, no procedural maneuver should be able to stop the 30-day snapback clock that starts with the U.S. notification to the Council.

WHY ARE RUSSIA AND CHINA OPPOSED TO THE SNAPBACK OF UNSCR 2231?

Russia and China want to sell advanced conventional arms to Iran starting in October when the arms embargo on Iran is scheduled to expire if it is not extended. They also look forward to supporting Iran’s missile program when restrictions on international support for the program expire in 2023. If snapback occurs, prior Security Council resolutions will restore indefinite restrictions on both of these activities.

IS THERE A 1971 INTERNATIONAL COURT OF JUSTICE (ICJ) ADVISORY OPINION THAT CONTRADICTS THE U.S. LEGAL POSITION?

No. Russia has alleged that a sentence in a 1971 [advisory opinion](#) issued by the ICJ proves that the United States has lost its right to snap back under UNSCR 2231.

The opinion in question was drafted in response to a Security Council request for the ICJ to decide whether South Africa had a legal right to continued rule over South West Africa (now Namibia). The Covenant of the League of Nations had established a mandate system, which transitioned to a trusteeship when the United Nations was founded. All mandatory powers made this transition except South Africa, which wanted to annex its mandate of South West Africa rather than allow its independence. The United Nations terminated South Africa’s mandate in 1966, and the continued rule of South West Africa was deemed illegal.

The ICJ ruled in 1971 that South Africa did not live up to its obligations as a mandatory power and thus forfeited its rights as such. “One of the fundamental principles governing the international relationship thus established is that a party which disowns or does not fulfill its own obligations cannot be recognized as retaining the rights which it claims to derive from the relationship,” the ICJ wrote in paragraph 91. While the sentence was specifically referring to the “international relationship” of a mandatory power and mandated territory, Russia is now using the quote to argue the United States forfeited its right to snap back, because it withdrew from the JCPOA.

Even if Washington accepted the application of the ICJ opinion beyond the issue of mandates, the United States has never violated UNSCR 2231 and, indeed, has [called on](#) the international community to uphold its obligations under UNSCR 2231 even after the Trump administration ceased its political participation in the JCPOA. As previously noted, UNSCR 2231 encourages but does not require participation in the JCPOA. The binding provisions of UNSCR 2231 relate to restrictions on Iran, which the United States continues to uphold. Therefore, under the ICJ opinion, the United States would still retain all rights and privileges afforded it by UNSCR 2231 with respect to snapback.

WHAT ARE IRAN'S OPTIONS TO RESPOND TO A SNAPBACK OF SANCTIONS?

In response to a U.S. snapback of UN sanctions on Iran, the Islamic Republic may choose to respond in any number of ways: ending its participation in the JCPOA; increasing its production of enriched uranium and/or raising the level of its enrichment to 20 percent or above; reducing access for the IAEA; ending its implementation of the Additional Protocol; withdrawing from the Nuclear Non-Proliferation Treaty (NPT); escalating direct and/or proxy asymmetric attacks in the region; and/or agreeing to negotiate a new comprehensive agreement soon after taking one of the aforementioned steps. Each of these options comes with its own risks for Iran, too. Since the JCPOA exists only on paper at this point, and with the United States demanding an agreement stronger than the JCPOA, an Iranian announcement that it is ending its participation in the JCPOA would not significantly alter the status quo. Similarly, given the IAEA's recent revelations that Iran is violating its commitments under the Additional Protocol by denying IAEA inspectors access to suspected nuclear sites, Iran's threat in June to cease implementing the safeguards supplement rings hollow. A decision to leave the NPT would shred whatever diplomatic credibility Iran retains with developed nations in Europe and Asia – turning Iran into a true pariah state like North Korea. Increasing enrichment levels and/or stockpiles would certainly generate headlines and political pressure in Europe and Washington, but Tehran will likely seek to avoid moves that could potentially cross unknown American or Israeli red lines for military action. Iran could always escalate its violent behavior in the region – whether in the Gulf, Iraq, or elsewhere – but the regime knows this conduct may cross an American red line for retaliatory military action. The likeliest scenario, therefore, is diplomatic brinkmanship that escalates tensions in the near term while preserving space to return to a diplomatic negotiation shortly thereafter.

IS SNAPBACK WORTH THE BYPRODUCT OF ENDING THE JCPOA?

Without question. If UNSCR 2231 and the JCPOA continue as prescribed, Iran will remain on an internationally legitimized pathway to robust conventional, missile, and nuclear capabilities – all while concealing undeclared nuclear material, sponsoring terrorism, fomenting conflicts in the Middle East, holding Americans and other foreign nationals hostage, and pledging to destroy the United States and Israel. Removing the JCPOA's legitimized pathways to nuclear weapons and resurrecting all international restrictions, sanctions, and demands – from blocking Iran's access to advanced conventional arms and missile parts to demanding that Iran halt all enrichment-related activities and cease all development of nuclear-capable missiles – the return of prior Security Council resolutions on Iran will support efforts to pressure Iran to abandon its wide range of malign activities.

HOW WOULD SNAPBACK IMPACT A POTENTIAL BIDEN ADMINISTRATION'S POLICY ON IRAN?

Should former Vice President Joe Biden win the November presidential election without a snapback taking place, he will enter office in January 2021 three months after the expiration of the UN arms embargo on Iran, with the clock ticking on the next JCPOA sunset provisions in 2023 and 2025, which cover international support for Iran's missile program, the expansion of Iran's centrifuge manufacturing capability, and Iran's work on advanced centrifuges. Should Iran sign contracts with Russia and/or China for advanced conventional arms between October 2020 and January 2021, Biden will have to consider how to manage the threat of mandatory U.S. secondary sanctions on Moscow and Beijing in his first 100 days – potentially disrupting and certainly complicating any bilateral diplomatic resets with America's top strategic competitors. Additionally, should Biden offer to re-enter the JCPOA – or even an interim agreement akin to the 2013 Joint Plan of Action – the sanctions relief provided by the United States could be viewed as a subsidy for Iran's purchase of advanced arms, which could in turn be used to kill Americans. Furthermore, having already reached its first strategic sunset, Iran would likely do its best to stall for time until it reaches its next sunset milestone in 2023 and, ultimately, until 2025 – when the snapback mechanism itself sunsets under UNSCR 2231. Iran is unlikely to make any meaningful, long-term concessions to a Biden administration unless snapback has already occurred.